

# CITY OF FAYETTEVILLE REQUEST FOR PROPOSALS



## AUDITING SERVICES COF1516782

ISSUED: MARCH 20, 2023

DUE: APRIL 13, 2023

The City of Fayetteville is soliciting proposals for auditing services to ascertain the validity and reliability of information, to recommend improvements in efficiency and effectiveness of operations and/or adherence to laws and regulations.

ISSUED BY:  
CITY OF FAYETTEVILLE

PRIMARY CONTACT:  
KIMBERLY TOON,  
PROCUREMENT MANAGER  
[kimberlytoon@fayettevillenc.gov](mailto:kimberlytoon@fayettevillenc.gov)

(910) 433-1942

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.



**A message from the City of Fayetteville City Manager, Douglas J. Hewett, ICMA-CM**

The City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including, but not limited to participation in the procurement of contracts relating to the construction of and improvements to facilities throughout the City. It is also the policy of the City to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, sex, color, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination. The City is also committed to follow all applicable State and Federal law as they relate to procurement practices.

The City will actively seek and identify qualified SLBE's and offer them the opportunity to participate in the procurement of contracts for all City purchasing and service contracts as well as construction and repair contracts.

The City aspires to spend 40% of its eligible contract dollars with small local suppliers and contractors. Towards this end the City's Charter has been amended by the General Assembly (H.B. 198) to allow the City to establish a race and gender neutral small business enterprise program to promote the development of small local businesses. The City is authorized to establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises located in Cumberland and Hoke Counties.

For more information or questions about the SLBE policy, please contact the Purchasing Division at 910-433-1942.

**CITY OF FAYETTEVILLE**

  
Kelly Olivera  
Assistant City Manager

## NOTICE TO BIDDERS

Pursuant to N.C.G.S. 143-129 sealed proposals will be received by the City of Fayetteville, until **2:00 p.m., April 13, 2023** at City Hall, 433 Hay Street, Fayetteville, North Carolina, at which time they will be considered for the purchase of the following:

### **Auditing Services**

Bids may be mailed to the City Purchasing Office, Attn: Kimberly Toon, 433 Hay Street Fayetteville, NC 28301, or may be delivered in person or by express mail to 433 Hay Street, Fayetteville, NC 28301

The bid opening will be held at **2:00 p.m. on April 13, 2023** at City Hall, 433 Hay Street, Fayetteville, NC 28301, for the project entitled, **“Auditing Services.”**

Plans, specifications and bid documents may be obtained in the Purchasing Office of the City of Fayetteville, 2<sup>nd</sup> floor, City Hall, 433 Hay Street, Fayetteville, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or by email request to [kimberlytoon@fayettevillenc.gov](mailto:kimberlytoon@fayettevillenc.gov)

The right is reserved to reject any or all bids and to waive all informalities concerning bid or award bid to the lowest, responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

**City of Fayetteville**

Kimberly Toon, CLGPO  
Purchasing Manager



## SECTION ONE: SCOPE OF AUDITING SERVICES

The City of Fayetteville is soliciting proposals from consultants to provide support for Audit services. The City seeks a consultant it can work effectively with to achieve project success. Audits are performed to ascertain the validity and reliability of information, to provide an assessment of a system's internal controls or operations, to recommend improvements in efficiency and effectiveness of operations, and/or adherence to laws and regulations. The goal of an audit is to express an opinion of the person, organization, system, etc. under evaluation based on work completed. This contract offers a total of seven auditing categories, as defined below.

### 1. Operational/Performance Audit

Provides a systematic and independent evaluation of organizational activities. Financial data may be used, but the primary sources of evidence are the operational policies and achievements related to organizational objectives. Internal controls and efficiencies may be evaluated during this type of review,

An operational audit tests an agency's internal systems and procedures for efficiency and effectiveness. These audits test operations for efficiency and effectiveness. Operational audits are usually a deeper review of an agency's operations than a financial audit, which is conducted in an after-the-fact audit process. Benefits from operational audits include objective opinions, improved workflow or cost allocation processes and quicker turnaround times.

An operational audit usually uncovers inefficient use of resources or wasted capital.

Administrative departments may also be reviewed during the operational audit process.

Administrative business processes may increase costs by employing too many individuals or having an improper workflow. Slow internal business processes can delay critical operations.

Auditors often test cost allocation processes during operational audits to determine the strengths and weaknesses of this system.

### 2. Investigative Audit

An audit that takes place as a result of an allegation of unusual or suspicious activity on the part of an individual or agency. It is usually focused on specific aspects of the work of the individual or agency.

In an investigative audit, allegations must be investigated, and evidence must be gathered pertaining to complaints, allegations, and tips of suspected fraud. Data must be sorted, analyzed, and compared to support the opinion that an allegation is substantiated or unsubstantiated.

Some specialization in forensic analytics, which is the analysis of electronic data to reconstruct, detect, or otherwise support a claim of fraud, may be required. The main steps in forensic analytics are (a) data collection, (b) data preparation, (c) data analysis, and (d) reporting. For example, forensic analytics may be used to review an employee's purchasing card activity to assess whether any of the purchases were diverted for personal use. Forensic analytics might be used to review the invoicing activity for a vendor to identify fictitious vendors.

### 3. Compliance Audit

Provides a comprehensive review of specific activities to determine whether performance conforms to predetermined contractual, regulatory, or statutory requirements. It may also include adherence to internal policies and procedures prescribed by the agency. Compliance audits may include examination of the agency's vendors to ensure conformance with contract agreements or an agency's sub-recipients to ensure adherence to grant requirements.

### 4. Information Systems and/or Information Technology Audit

Provides an examination of the management controls within an information technology infrastructure. The evaluation of obtained evidence determines whether the information systems are safeguarding assets, maintaining data integrity, and operating effectively to achieve the organization's goals or objectives.

- General Controls Review

A review of the controls which govern the development, operation, maintenance, and security of application systems in a particular environment. This type of audit might involve reviewing a data center, an operating system, a security software tool, processes and procedures (such as the procedure for controlling production program changes), etc.

- Systems and Applications

An audit to verify that systems and applications are appropriate, efficient, and adequately controlled to ensure valid, reliable, timely, and secure input, processing, and output at all levels of a system's activity. This would involve an examination of the controls over the input, processing, and output of system data. Data communications issues, program and data security, system change control, and data quality issues are also considered.

- System Development

An audit to verify that systems underdevelopment meet the objectives of the organization and to ensure that the systems are developed in accordance with generally accepted standards for systems development and state information technology requirements. This involves an evaluation of the development process as well as the product. Consideration is also given to the general controls over a new application, particularly if a new operating environment or technical platform will be used.

- Client/Server, Telecommunications, Intranets, and Extranets

An audit to verify that telecommunication controls are in place on the client (computer receiving services), server, and on the network connecting the clients and servers.

### 5. Construction Audit

The scope and objective of construction audits vary considerably by entity and situation. Components of a construction audit may include, but are not limited to:

- Determine that billings and payments are in accordance with contract documents



- Identify potential cost exceptions, overcharges, or duplicated payments
- Assess the cost related to labor, materials, rental equipment, miscellaneous expenses, subcontractor cost and charges related to general conditions
- Determine if change orders are appropriate and priced based on contract standards
- Identify opportunities for cost avoidance
- Provide information that will result in cost recoveries
- Identify potential control deficiencies and exposure to overcharges on future contracts (e.g., opportunities for improving methods and procedures as they relate to contract terms, bidding and selection procedures, job site inspection and monitoring procedures, billing review procedures, and controls over change orders and pricing)

## 6. Risk Assessment and Audit Plan Development

The scope and objective of this assessment is to allocate limited internal audit resources to areas of the organization that are most critical to the success of the organization in reaching its goals. A well-developed risk assessment model will provide an efficient and systematic procedure to determine the auditable areas of an entity, measure the risk of each unit and identify activities exposed to high risk, rank the units by risk, determine the time necessary to complete audits, distribute available resources in the most efficient manner, and develop annual and/or long-term audit plans.

## 7. Financial Audit

Includes the verification of the financial statements, or a component of the financial, of a legal entity with a view to express an audit opinion. The audit opinion is intended to provide reasonable assurance that the financial statements are presented fairly, in all material respects, and/or give a true and fair view in accordance with the financial reporting framework. The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements.

- Financial audits exist to add credibility to the implied assertion by an organization's management that its financial statements fairly represent the organization's position and performance to the firm's stakeholders. The audit is designed to increase the possibility that a material misstatement is detected by audit procedures. A misstatement is defined as false or missing information, whether caused by fraud (including deliberate misstatement) or error.
- Other types of financial audits entail various scopes of work, including:
  - (a) obtaining sufficient, appropriate evidence to form an opinion on single financial statements, specified elements, accounts, or items of a financial statement; (b) issuing letters for underwriters and certain other requesting parties; and (c) auditing compliance with applicable compliance requirements relating to one or more government programs.

- This type of audit must be performed in accordance with generally accepted auditing standards and requires verification and substantiation procedures. These procedures may include direct correspondence with creditors or debtors to verify details of amounts owed, physical inspection of inventories or investment securities, inspection of minutes and contracts, and other similar steps. The audit requires gaining an understanding of the entity's system of internal controls.

## SECTION TWO: INSTRUCTIONS TO BIDDERS

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFP document.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION:** The City reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the proposal.
4. **WITHDRAWAL OF PROPOSAL:** No proposal may be changed or withdrawn after the time of the proposal due date. Any modifications or withdrawals requested before this time shall be acceptable only when such request is made in writing to the Financial Services Manager.
5. **CONFLICT OF INTEREST:** Each bidder shall affirm that no official or employee of the City of Fayetteville is directly or indirectly interested in this proposal for any reason of personal gain.
6. **EQUAL EMPLOYMENT OPPORTUNITY:** The City has adopted an Equal Employment Opportunity Clause, which is incorporated into all specifications, purchase orders, and contracts, whereby a vendor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry. A copy of this clause may be obtained at the City Clerk's Office, City Hall, Fayetteville, N. C. by submitting a proposal, the firm is attesting that they are an Equal Opportunity Employer.
7. **SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PROGRAM:** It is the policy of the City of Fayetteville to provide small and local businesses equal opportunity for participating in all aspects of the City's contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchase, and professional and personal service contracts. In accordance with this policy, the City has adopted a Small, Local, Business Enterprise (SLBE) Plan and subsequent program.

All firms submitting bids agree to utilize small and local suppliers and service providers whenever possible. Questions regarding the City's SLBE Program should be directed to the Purchasing Office at (910) 433-1942.



8. **INSURANCE REQUIREMENTS:** Contractor shall maintain at its own expense (a) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence for bodily injury or property damage; City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301 shall be named as additional insured. (b) Professional Liability insurance in an amount not less than \$1,000,000 per occurrence-if providing professional services; (c) Workers Compensation Insurance as required by the general statutes of the State of North Carolina and Employer's Liability Insurance not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit; (d) Commercial Automobile Insurance applicable to bodily injury and property damage, covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 per occurrence as applicable. Certificates of Insurance shall be furnished prior to the commencement of Services.

9. **E-VERIFY COMPLIANCE:** The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Contractor utilizes a Subcontractor, the Contractor shall require the Subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. By submitting a proposal,

The Proposer represents that their firm and its Subcontractors are in compliance with the requirements of Article 2 Chapter 64 of the North Carolina General Statutes.

10. **IRAN DIVESTMENT ACT:** By submitting a proposal, the Vendor certifies that: (i) it is not on the Iran Final Divestment listed created by the N.C. State Treasurer pursuant to N.C.G.S. 147- 86.58; (ii) it will not take any actions causing it to appear on said list during the term of any contract with the City, and (iii) it will not utilize any subcontractor to provide goods and services hereunder that is identified on said list.

11. **PROTEST:** Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than (7) calendar days following receipt of said protest by the Purchasing Manager.

12. **REPORT:** The Contractor will prepare and provide to the Internal Audit Director and the City Manager a written report in accordance with generally accepted auditing standards. The report will include any scope limitations; the findings with the condition, cause and effect; and recommendations.

13. **WORKPAPERS:** The Contractor will provide the Internal Audit Director with copies of the workpapers, work plans, and other documentation that demonstrate the audit report was completed in accordance with generally accepted auditing standards. The workpapers must be in an electronic format that will allow for retrieval and review in a commonly used software acceptable to the City (e.g., Microsoft Office Word or Excel, or Adobe Acrobat). The files provided may be protected to prevent changes after completion, i.e., the workpapers may be submitted in read-only format.



14. CONFIDENTIALITY: The Contractor must keep all original workpapers, work plans, and other documentation confidential. Any public record requests should be forwarded to the City.

15. STANDARDS: To meet the requirements of this request for proposal, the audit(s) shall be performed in accordance with all applicable and generally accepted auditing standards including but not limited to: the U.S. Government Accountability Office Government Auditing Standards, U.S. Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost principles and Audit Requirements for Federal Awards* and other relevant regulations.

16. IRREGULARITIES: Any irregularities, areas of concern and fraud shall immediately be provided in writing to the Internal Audit Director and City Manager.

17. CHANGES IN SCOPE: The City may request changes in scope due to irregularities, areas of concern or fraud found by the Contractor. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this agreement.

18. CONFERENCES: At a minimum, the following conferences shall be held:
- a) Entrance conference with Internal Audit staff and staff of the department being audited;
  - b) Progress conferences with Internal Audit staff as needed;
  - c) Exit conference with Internal Audit staff and staff of the department being audited; and
  - d) Presentation at the next scheduled quarterly Audit Committee meeting.

### SECTION THREE: PROCUREMENT PROCESS

Written questions shall be emailed to [kimberlytoon@fayettevillenc.gov](mailto:kimberlytoon@fayettevillenc.gov) by April 6, 2023 at 5:00 p.m. The email subject line must be as follows: "Questions RFP – Auditing Services."

Responses will be posted in the form of an addendum to the RFP on the City's website at <https://www.fayettevillenc.gov/government/financial-services/current-bid-opportunities>. No information, instruction or advice provided orally or informally, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding.

No contact regarding this RFP will be allowed between Proposers or potential Proposers and employees of the CITY staff after issuance of the RFP with the exception of the CITY contact person named on the cover page. Any such contact may disqualify a firm from further consideration. Requests for clarification from Proposers will be allowed provided that such requests are made through the Purchasing Manager in writing.

### PROPOSAL SUBMITTAL:

One (1) signed, executed copy and one (1) digital copy of the proposal on a flash drive in PDF format submitted in a sealed envelope shall be received as shown on the schedule above.

Mailing & Hand Delivery Address:

City of Fayetteville

Attn: Kimberly Toon, Purchasing Manager

433 Hay Street

Fayetteville, NC 28301

RFP – Auditing Services

All proposals should be clearly marked on the outside of the package with the Vendor's name, Attention: Kimberly Toon, and the title "Auditing Services".

PLEASE NOTE: IT IS THE PROPOSER'S RESPONSIBILITY TO ENSURE THAT PROPOSALS ARE RECEIVED BY THE PURCHASING DIVISION BY THE STATED DAY and TIME. No late proposals will be accepted.

All proposals must be signed by an authorized official of the firm. The vendor shall insert the required responses and supply all the information, as requested.

#### SECTION FOUR: EVALUATION CRITERIA

Proposals will be assessed to determine the most comprehensive, competitive and best value solution for the City based on, but not limited to, the criteria below. The City reserves the right to modify the evaluation criteria or waive portions thereof.

Proposals will be evaluated on the following major categories:

1. Project Approach/Proposed Solution
2. Qualifications and Experience
3. Cost Effectiveness and Value



# **Professional Service Agreement**

## **Scope of Work and Terms Document**

**City of Fayetteville, NC**

SAMPLE

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_ 2023 by and between the City of Fayetteville, a North Carolina City and Municipal Corporation ("City"), and \_\_\_\_\_.

In consideration of mutual promises and covenants in this Agreement, the parties agree as follows:

### ARTICLE 1. Services

1.1 Background. The City desires to engage -----xxxxxxx----- to provide certain professional services as fully described and outlined in the Proposal (Exhibit 1) which is attached hereto and fully incorporated into this Agreement by reference. -----xxxxxxx----- is willing to provide such services as outlined in the Proposal on the terms and conditions stated in this Agreement.

1.2 Scope of Work. -----xxxxxxx----- will furnish the services as set forth in the Proposal which is incorporated by reference herein.

1.3 Time of Performance. -----xxxxxxx----- will perform the services promptly and according to the Proposal provided. The City will cooperate with -----xxxxxxx----- as reasonably required to complete the services outlined in the Proposal. Both parties acknowledge that changes from or delays in the timeline may extend the date(s) for delivery of the service(s).

1.4 Term. The term of this Agreement shall begin on the date expressed in the introductory paragraph of this Agreement and shall continue until terminated based upon the completion of services by -----xxxxxxx----- as outlined in the Proposal.

### ARTICLE 2. Payment

2.1 Basis of Compensation: The City shall pay -----xxxxxxx----- for services rendered under this Agreement in amounts tied to the various project milestones as set forth in the Proposal. Each payment shall be invoiced upon completion of each successive milestone and the City shall pay within thirty (30) days. In no event shall the payment for all work performed pursuant to this Agreement exceed the amount of \$\_\_\_\_\_ without prior written authorization of the City. Such payment shall be full compensation for all work performed and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.



2.2. Records. -----xxxxxxx----- shall keep records and accounts pertaining to this Agreement available for inspection by the City for a period of three (3) years after final payment. Copies of records and accounts pertaining to this Agreement shall be made available to the City upon request.

### **ARTICLE 3. Termination**

3.1 Termination for Cause: In the event of substantial failure by -----xxxxxxx----- to perform in accordance with the terms of this contract, City of Fayetteville shall have the right to terminate -----xxxxxxx----- upon ten calendar (10) days written notice in which event -----xxxxxxx----- shall have neither the obligation nor the right to perform further services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed. -----xxxxxxx----- shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City's request.

3.2 Termination for Convenience: Upon thirty (30) calendar days' written notice to -----xxxxxxx-----, the City of Fayetteville may, without cause and without prejudice to any other right or remedy legally available to the City of Fayetteville, terminate this Contract. Upon such notice, -----xxxxxxx----- shall have neither the obligation nor the right to perform services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, -----xxxxxxx----- shall be paid for the completed and accepted work executed in accordance with this Contract prior to the written notice of termination. Additionally, upon mutual agreement, -----xxxxxxx----- may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Contract, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days' after the written notice is sent by the City of Fayetteville. -----xxxxxxx----- shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City's request.

### **ARTICLE 4. Liability, Indemnification and Insurance**

4.1 General. The City and -----xxxxxxx----- have considered the risks and potential liability that may exist during the performance of services by -----xxxxxxx----- and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, -----xxxxxxx----- shall purchase and maintain insurance coverage as hereinafter set

forth, without lapse or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

4.2 Indemnity and Professional Liability. To the extent permitted by law, -----xxxxxxx----- agrees to defend, indemnify and hold harmless the City of Fayetteville and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of -----xxxxxxx----- its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the City by -----xxxxxxx----- does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law. -----xxxxxxx----- agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 coverage for each claim, with a general aggregate of \$2,000,000. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A•VII.

4.3 Liability Insurance. -----xxxxxxx----- agrees to defend, indemnify and hold the City, its servants, agents and employees, harmless from and against all liabilities, claims, demands, suits, losses, damages, costs and expenses (including attorney's fees) for third party bodily injury to or death of any person, or damage to or destruction of any third party property, to the extent caused by the negligence of -----xxxxxxx-----, -----xxxxxxx-----'s employees, and -----xxxxxxx-----'s subcontractors, for whom -----xxxxxxx----- is legally responsible during the performance of services under this Agreement. -----xxxxxxx----- shall purchase and maintain at all times during performance of services under this Agreement Commercial General Liability Insurance with combined single limits of \$1,000,000.00 coverage for each occurrence with a general aggregate of \$2,000,000.00, designating the City as an additional insured and which said insurance provides -----xxxxxxx----- with insurance for contractual liability which -----xxxxxxx----- has assumed pursuant to the terms of this Agreement.

4.4 Other Insurance. In addition to professional liability insurance and commercial general liability insurance set forth above, -----xxxxxxx----- further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:

(a) Worker's Compensation Insurance as provided by North Carolina law which said policy shall also afford coverage to -----xxxxxxx----- for employer's liability.



(b) Automobile liability insurance with \$1,000,000.00 combined single limit for each accident covering bodily injury and property damage.

(c) The CGL policy required above shall include independent contractor liability coverage.

(d) The CGL policy required above shall provide -----xxxxxxx----- with products and completed operations insurance, said coverage to be written on an occurrence basis, with coverage extended for such a period of time that suits can be filed before the running of the statute of limitations on any claim for injury to person or property due to negligence of -----xxxxxxx----- in the design of any building designed by -----xxxxxxx----- under the terms of this Agreement.

**ARTICLE 5. Independent Contractor.** -----xxxxxxx----- is an independent Contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. -----xxxxxxx----- shall be wholly responsible for the methods, means and techniques of performance. City shall have no right to supervise methods and techniques of performance employed by -----xxxxxxx----- but City shall have the right to observe such performance.

**ARTICLE 6. Other**

6.1 Assignment. It is the intent of this Agreement to secure the personal services of -----xxxxxxx----- and failure of -----xxxxxxx----- for any reason to make the personal services available to the City for the purposes described in this Agreement and Proposal shall be cause for termination of this Agreement. -----xxxxxxx----- shall not assign this Agreement without prior written consent of the City.

6.2 Non-Appropriation. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and other governmental entities. In the event sufficient appropriations or monies are not made available to the City to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the City.

6.3. Governing Law. The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of the State of North Carolina.

6.4 Venue. The Parties expressly agree that if litigation is brought in connection with this Agreement and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North



Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina

6.5 Non Discrimination. -----xxxxxxx----- agrees not to discriminate by reason of age, race, religion, color, sex, national origin, disability or other applicable law while performing the services required herein.

6.6 Compliance with Laws. -----xxxxxxx----- agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government.

6.7 Severability. The parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this Agreement and the requirements of applicable law.

6.8 Amendment. The City and -----xxxxxxx----- may, from time to time, request changes in services to be performed by -----xxxxxxx----- . Any such changes that are mutually agreed upon by the City and -----xxxxxxx----- shall be incorporated herein by written amendment to this Agreement. It is mutually agreed and understood that no alteration or validation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the parties hereto, shall not be binding.

6.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties. Any proposed change to this Agreement shall be submitted to the City for its prior approval. No modification, addition, deletion, etc., to this Agreement shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each party.

6.10 Force Majeure. Neither party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

6.11 Morality Clause. If, in the sole opinion of the City, at any time -----xxxxxxx----- or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City or are scandalous or inconsistent with



community standards or good citizenship or may adversely affect the City's finances, public standing, image, or reputation or are embarrassing or offensive to the City or may reflect unfavorably on the City or are derogatory or offensive to one or more employee(s) or customer(s) of the City, the City may immediately upon written notice to -----xxxxxxx----- terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity.

**CITY'S TERMS SUPERSEDE:** To the extent that there are terms in any of the attachments that conflict with the terms of this Agreement, the terms of this Agreement are superseding.

6.12 E-Verify. -----xxxxxxx----- hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. -----xxxxxxx----- further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). -----xxxxxxx----- hereby pledges, attests and warrants through execution of this Agreement that -----xxxxxxx----- complies with the requirements of Article 2 of Chapter 64 of North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by -----xxxxxxx----- shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

6.13 Iran Divestment Act. As mandated by N.C.G.S. 147-86.59(a), -----xxxxxxx----- hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. -----xxxxxxx----- further certifies that in accordance with N.C.G.S. 147-86.59(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. -----xxxxxxx----- certifies that the signatory to this Agreement is authorized by -----xxxxxxx----- to make the foregoing statement.

6.14 Protest. Protests related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than (7) calendar days following receipt of said protest by the Purchasing Manager.

6.15 Survival of Terms. All warranties, covenants, and representations contained within this contract and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this contract. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this contract or other applicable work undertaken in furtherance of this contract.

[Signature page to follow]

SAMPLE



ATTEST:

\_\_\_\_\_

**VENDOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

Signature \_\_\_\_\_

ATTEST:

**CITY OF FAYETTEVILLE**

\_\_\_\_\_  
PAMELA MEGILL, City Clerk

By: \_\_\_\_\_  
DOUGLAS J HEWETT, ICMA-CM  
City Manager

This instrument has been pre-audited in the  
manner required by the Local Government  
Budget and Fiscal Control Act.

\_\_\_\_\_  
JODY PICARELLA  
Chief Financial Officer

SAMPLE